



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, 482, 485, and 495

[CMS-1771-CN]

RIN 0938-AU84

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2023 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Costs Incurred for Qualified and Non-qualified Deferred Compensation Plans; and Changes to Hospital and Critical Access Hospital Conditions of Participation; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule; correction.

SUMMARY: This document corrects typographical errors in the final rule that appeared in the August 10, 2022, **Federal Register** as well as an additional typographical error in a related correcting amendment that appeared in the November 4, 2022 **Federal Register**.

The final rule was entitled "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2023 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Costs Incurred for Qualified and Non-qualified Deferred Compensation Plans; and Changes to Hospital and Critical Access Hospital Conditions of Participation".

DATES: Effective date: This correction is effective on December 12 2022.

Applicability date: This correction is applicable for discharges beginning October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Donald Thompson, and Michele Hudson, (410) 786-4487 or DAC@cms.hhs.gov, Operating Prospective Payment.

SUPPLEMENTARY INFORMATION:

I. Background

In the final rule which appeared in the August 10, 2022, **Federal Register** (87 FR 48780) entitled "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2023 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Costs Incurred for Qualified and Non-qualified Deferred Compensation Plans; and Changes to Hospital and Critical Access Hospital Conditions of Participation" (hereinafter referred to as the FY 2023 IPPS/LTCH PPS final rule), there were a number of technical and typographical errors. To correct the typographical and technical errors in the FY 2023 IPPS/LTCH PPS final rule, we published a correcting document that appeared in the November 4, 2022, **Federal Register** (87 FR 66558) (hereinafter referred to as the FY 2023 IPPS/LTCH PPS correcting amendment).

In FR Doc. 2022-24077 of November 4, 2022 (87 FR 66558), there was an inadvertent omission that is identified and corrected in this correcting document. This document also corrects computational errors in FR Doc. 2022-48780 of August 10, 2022 (87 FR 48780). The corrections in this correcting document are applicable to discharges occurring on or after October 1, 2022, as if they had been included in the document that appeared in the August 10, 2022 **Federal Register**.

II. Summary of Errors

A. Summary of Errors in the in the FY 2023 IPPS/LTCH PPS Final Rule

On page 49075, in an untitled table regarding direct graduate medical education (DGME) Medicare advantage (MA) payments, we inadvertently made computational errors in the CY 2020 and CY 2021 figures for “Percent Reduction to MA DGME Payments.”

B. Summary of Errors in the FY 2023 IPPS/LTCH PPS Correcting Document

On page 66563 of the FY 2023 IPPS/LTCH PPS correcting amendment, we inadvertently omitted a correction to the outlier fixed-loss cost threshold for FY 2023 on page 49428 of the FY 2023 IPPS/LTCH PPS final rule, to reflect our recalculation of the outlier fixed-loss cost threshold.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rulemaking in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rulemaking in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of

the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this final rule correction does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. This document corrects typographical errors in the FY 2023 IPPS/LTCH PPS final rule and the FY 2023 IPPS/LTCH PPS final rule correcting amendment, but does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this final rule correction is intended to ensure that the information in the FY 2023 IPPS/LTCH PPS final rule accurately reflects the policies adopted in that document.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the FY 2023 IPPS/LTCH PPS final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not altering our payment methodologies or policies, but rather, we are simply implementing correctly the methodologies and policies that we previously proposed, requested comment on, and subsequently finalized. This final rule correction is intended solely to ensure that the FY 2023 IPPS/LTCH PPS final rule accurately reflects these payment methodologies and policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements. Moreover, even if these corrections were considered to be retroactive rulemaking, they would be authorized under section 1871(e)(1)(A)(ii) of the Act, which permits the Secretary to issue a rule for the Medicare program with retroactive effect if the failure to do so would be contrary to the public interest. As we have explained previously, we

believe it would be contrary to the public interest not to implement the corrections in this final rule correction for discharges occurring on or after October 1, 2022, because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the FY 2023 IPPS/LTCH PPS final rule accurately reflects our policies.

Correction of Errors

A. Correction of Errors in the Final Rule

In FR Doc. 2022–16472 of August 10, 2022 (87 FR 48780), we are making the following corrections:

1. On page 49075, in the untitled table, line 8 (“Percent Reduction to MA DGME Payments”),
 - a. Second column (CY 2020), the figure “3.71%” is corrected to read "3.73%".
 - b. Fourth column (CY 2021), the figure "3.22% " is corrected to read "3.26%".

B. Correction of Errors in the Correcting Document

In FR Doc. 2022–24077 of November 4, 2022 (87 FR 66558), we are making the following correction:

3. On page 66563, second column, after the 14th full paragraph (item (2)(b)) the text is corrected by adding a paragraph (item (2)(c)) to read as follows:

"(c) Second full paragraph, line 9, the figure “\$38,859” is corrected to read “\$38,788”."

Elizabeth J. Gramling,

Executive Secretary to the Department,

Department of Health and Human Services.

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